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**FISCAL IMPACT STATEMENT**

**LS 6916**

**BILL NUMBER:** SB 329

**NOTE PREPARED:** Apr 9, 2007

**BILL AMENDED:** Apr 9, 2007

**SUBJECT:** Child Support and Child Custody.

**FIRST AUTHOR:** Sen. Lawson C

**FIRST SPONSOR:** Rep. Welch

**BILL STATUS:** 2<sup>nd</sup> Reading - 2<sup>nd</sup> House

**FUNDS AFFECTED:** X GENERAL

X DEDICATED

X FEDERAL

**IMPACT:** State & Local

**Summary of Legislation:** (Amended) This bill does the following.

(a) *Income Withholding Orders:* The bill requires: (1) a court that orders, modifies, or enforces a child support order in a Title IV-D case to issue an immediate income withholding of an obligor's income; and (2) the Bureau of Child Support to prescribe standard income withholding order and notice forms. The bill establishes: (1) requirements for implementation of an income withholding order; (2) amounts to be withheld under certain income withholding orders; (3) notice requirements concerning income withholding orders; and (4) income withholding requirements for income payors. It provides that: (1) a court may stay implementation of an income withholding order if certain requirements are met; (2) if a court does not issue an income withholding order, a Title IV-D agency may issue an income withholding order; (3) a Title IV-D agency may lift a stay of implementation of an income withholding order if certain conditions are met; (4) an obligor or obligee may file a petition to lift a stay; (5) an income payor who fails to comply with an income withholding order is liable under certain circumstances; and (6) a Title IV-D agency or its agent is not subject to civil liability for income withheld and paid in accordance with an income withholding order. It also provides that an income payor that discharges from employment, refuses to employ, takes disciplinary action, or otherwise discriminates against an obligor because of an income withholding order is subject to a penalty not to exceed \$5,000. The bill repeals and replaces provisions concerning the issuance and activation of income withholding orders.

(b) *New Child Support Fee:* The bill requires a Title IV-D agency that collects at least \$500 of child support for an individual who has never received Title IV-A assistance to charge an annual fee, which must be collected from child support payments, the parent who owes child support, or state funds appropriated for the purpose of paying the fee.

(c) *Orders for Medical Support in Child Support Orders*: The bill requires a child support order to include an order for medical support to be provided by either or both parents.

(d) *Child Support Fee Increase*: The bill changes the annual child support fee from \$30 to \$55.

(e) *Review and Adjustment of Child Support Orders*: The bill adds a cross reference to an existing provision regarding the review and adjustment of child support orders.

(f) *Subpoenas for Child Support*: The bill requires the Child Support Bureau to send notification of a subpoena under Indiana Trial Rule 45.

(g) *Weekly Child Support Increases*: The bill permits a Title IV-D agency to increase the weekly amount withheld from an obligor subject to an income withholding order who is in arrears.

(h) The bill makes other changes and conforming amendments.

(i) The bill repeals and replaces provisions concerning the issuance and activation of income withholding orders. The bill also Repeals the Uniform Child Custody Jurisdiction Law and replaces it with the Uniform Child Custody Jurisdiction Act. It establishes a uniform process to enforce interstate child custody and visitation determinations, and harmonizes the law with respect to simultaneous proceedings and inconvenient forums. It also repeals other statutes concerning the Uniform Child Custody Jurisdiction Law. The bill makes other changes and conforming amendments.

(j) The bill specifies that the \$13 service of process fee that a sheriff is required to collect from a party requesting service of a writ, an order, a process, a notice, a tax warrant, or any other paper completed by the sheriff may be collected only one time per case for the duration of the case.

**Effective Date:** July 1, 2007; January 1, 2008.

**Summary of Net State Impact:** *Summary* - This bill makes multiple changes affecting the Department of Child Services (DCS), Indiana Horse Racing Commission, Indiana Gaming Commission, Bureau of Motor Vehicles, Department of Natural Resources, Indiana Professional Licensing Agency, Department of Education, and Department of Insurance, prosecuting attorneys, and the courts. It impacts expenditures and revenues at both the state and local levels. The following summarizes changes affecting income withholding orders (IWO), child support fees, orders for medical support in child support orders, review and adjustment of child support orders, subpoenas for child support, and weekly child support increases.

Provision	State Expenditures	State Revenues
(a) Income Withholding Order Changes.	Would require certain state agencies to modify child support notices; Allows IWO notices to be sent once and allows them to be sent by mail, electronic means, or fax, would reduce expenditures for the DCS; Requires DCS to prescribe forms.	Allows the state to penalize an income payor for an amount not to exceed \$5,000 under certain circumstances, penalties would increase state General Fund revenues. Disallows obligors from filing a civil case against their employer, would decrease court fee revenues.

Provision	State Expenditures	State Revenues
(b) Requires a Title IV-D agency that collects at least \$500 of child support for certain individuals to charge an annual fee.	Increase in expenditures ranging between \$0 and \$1.2 M. Expenditures can be offset from revenues collected under (e), below.	
(c) Requires a child support order to include an order for medical support to be provided by either or both parents.	Expenditures for the state could be reduced should a child who is receiving Medicaid be entitled to medical support under the bill, and either the custodial or noncustodial parent pays the amount of the medical support.	
(d) Changes the annual child support fee from \$30 to \$55.		Increase in revenue ranging from \$0 to \$3 M annually.
(e) Adds a cross reference to an existing provision regarding the review and adjustment of child support orders.	Would increase the workload of prosecuting attorneys' offices and the courts by an indeterminable amount.	
(f) Requires the CSB to send notification of a subpoena under Indiana Trial Rule 45.	CSB or CSB agent would be required to send notification of the subpoena through varying methods. Increases in expenditures would be dependent on the number of subpoenas sent and the method in which they were sent.	

**Explanation of State Expenditures:** *Details of the Bill -*

(a) *Income Withholding Orders:* Notification of Child Support Delinquency: Under the bill, the Indiana Horse Racing Commission, Indiana Gaming Commission, Bureau of Motor Vehicles, Department of Natural Resources, Indiana Professional Licensing Agency, Department of Education, and Department of Insurance would likely need to modify notices which inform an individual licensed (this also includes vehicle registration) under the entity that they are delinquent in child support payments and are subject to an order placing the person on probationary statute. Furthermore, the individual may have their license revoked should they not rectify the matter. These agencies should be able to do so within existing levels of resources.

Implementation of Child Support Orders: The bill allows the Child Support Bureau (CSB) to implement an income withholding order for a Title IV-D child support case should the court not issue one with a support order.

Standard Forms: The bill requires the CSB to prescribe standard forms for an income withholding order and a notice form. In addition, the CSB is required to make the forms available to a court, private attorney, obligor, or obligee. The CSB reports that it currently makes forms available to the courts. The CSB should be able to modify current forms, prescribe new forms, and make the forms available to private attorneys,

obligors, and obligees, within its existing level of resources.

Notification Methods: The bill allows a court or the CSB to serve an income withholding order on an income payor through first class mail, fax, or other electronic means approved by the CSB. The CSB reports that it currently serves income withholding orders primarily through the mail and occasionally by fax. Should the CSB serve income withholding orders through electronic means, expenditures for the CSB could decrease.

The cost to send an item through first class mail is currently \$0.39. The number of income withholding order notices sent annually is not known.

One-Time Notification Notices: The bill also requires the CSB to send a notice of intent to withhold income to an obligor prior to implementing an income withholding order. The bill states that the a notice sent is sufficient for all future income withholding until a child support obligation is fully satisfied. Currently, the CSB is required to send a notice prior to implementing each income withholding order. As proposed, the CSB would be required to send fewer notices and would experience a decrease in expenditures. The cost to send an item through first class mail is currently \$.39. The number of notices currently sent prior to implementing an income withholding order is not known.

Income Payor Notices: The bill requires the CSB to send an income payor who fails to forward money required by an income withholding order to send notice to the payor through certified mail that the income payor is liable for the amount the income payor fails to forward. The cost to send a letter through certified mail is \$2.79. The number of notices that will need to be sent is not known.

(b) *New Child Support Fee:* The bill requires the CSB to collect an annual fee from each individual who: (1) the agency has collected at least \$500 of child support payments for during a one-year time frame, and (2) has never received Title IV-A assistance. The CSB reports that federal regulations require the state to collect the fee.

The CSB reports that it intends to use the additional \$25 collected from the Support and Maintenance Fee (see "*Explanation of State Revenues, (b) Child Support Fee Increase*") as the fee required to be collected under this provision. Thus, no actual increase in revenues would occur from the provision. However, the provision could increase expenditures for the state. The CSB reports that federal law requires Indiana to collect a fee from all individuals falling under the aforementioned categories (see (1) and (2) above). Thus, should a person meeting those requirements not pay the fee, the state would be responsible for payment. In such cases, the state would experience an increase in expenditures totaling 66% of the fee (\$16.50 per fee collected) for each person meeting (1) and (2) above. This is because the state is required to forward 66% of all child support administrative fees to the federal government.

There were approximately 71,000 cases fitting the population definitions under (1) and (2) during 2005. The number of those cases which paid a Support and Maintenance Fee is not known. The table below presents the increase in expenditures for the state given various scenarios of cases not paying. It is assumed that actual increase in expenditures can be offset from revenue collected from the increase in the Support and Maintenance Fee.

<b>Number of Cases Fee Not Paid</b>	<b>Percent of Cases Fee Not Paid</b>	<b>Money Paid by State to the Feds for Fee</b>
14,200	20%	\$234,300
28,400	40%	\$468,600
42,600	60%	\$702,900
56,800	80%	\$937,200
71,000	100%	\$1,171,500
*Please note that data pertaining to the number of cases for which a fee would be collected is based on assumptions made by the CSB about future federal regulations. The actual number of cases may vary in the future and will depend on final federal regulations.		

(c) *Orders for Medical Support in Child Support Orders*: The bill modifies current statute and requires a court to include an order for medical support to be provided by either or both parents in a child support order. Under current law, a court may order basic health and hospitalization insurance when appropriate. In addition, the court is required to include a provision for basic health and hospitalization insurance if the Title IV-D agency initiates action to establish a support obligation.

Expenditures for the state could be reduced should a child who is receiving Medicaid be entitled to medical support under the bill, and either the custodial or noncustodial parent pays the amount of the medical support. The number of children receiving Medicaid and who would be entitled to medical support under the bill is not known. Actual decreases in expenditures would equal the total amount of medical support paid by a custodial or noncustodial parent which would have been covered by the state under Medicaid.

*Background Information*: The CSB reports that as of September 30, 2006, there were 131,015 support cases which included an order for medical support out of a total of 355,757 cases.

(e) *Review and Adjustment of Child Support Orders*: The bill states that modification of child support orders are subject to IC 31-25-4-17(a)(6). This statute states that the CSB shall use a simplified procedure for the review and adjustment of support orders as set forth in 42 U.S.C. 666(a)(10). This federal code pertains to review and adjustment of support orders upon request. Currently, the CSB reports that it uses the procedures outlined for review and adjustment of support orders described in 42 U.S.C. 666(a)(10). However, the CSB reports that the 2005 Deficit Reduction Act amended 42 U.S.C. 666(a)(10) and will, effective October 1, 2007, require states to review and, if needed, modify all Temporary Assistance for Needy Families (TANF) child support cases every three years.

The CSB reports that as of December 2005 there were 31,525 TANF child support cases. Assuming that this number stays consistent, prosecuting attorney offices would be required to review approximately 10,500 TANF child support cases annually. This provision would increase administrative duties for the offices. Currently, the CSB contracts with 90 prosecuting attorney's offices. Given this number, each office would review approximately 115 TANF child support cases annually. However, it should be noted that the distribution of child support cases is not even across the state, thus, some offices may be required to review a larger number of cases than others.

Should a TANF child support case meet the requirements set in statute which allow for a child support case to be modified, a prosecuting attorney's office would be required to go before the court to modify the support order. Requirements set forth in statute allowing for modification are as follows: (1) upon a showing of changed circumstances so substantial and continuing as to make the terms unreasonable; or (2) upon a showing that: (a) a party has been ordered to pay an amount in child support that differs by more than 20% from the amount that would be ordered by applying the child support guidelines; and (b) the order requested to be modified or revoked was issued at least 12 months before the petition requesting modification was filed.

This requirement would increase the workload of prosecuting attorneys' offices and the courts. The number of TANF child support cases necessitating modification after review is not known. The CSB reports that currently child support orders are modified only upon a request made by a custodial or noncustodial parent. Furthermore, the CSB does not collect data pertaining to how often or how many cases are reviewed and modified. Potentially, some of the cases which would be required to be reviewed under the bill would have been reviewed already; however, the number of these cases is likely few.

The *2005 Indiana Judicial Services Report* indicates that in 2002 the average number of minutes assigned for a modification of child support case was 31. The table below presents figures pertaining to time increases in statewide workload for prosecuting attorneys' offices and courts based on this figure.

Percent Cases Modified	Number Cases Modified	Minutes Assigned	Increase in Workload Annually (Hours)
10%	1,050	31	543
20%	2,100	31	1,085
40%	4,200	31	2,170
60%	6,300	31	3,255
80%	8,400	31	4,340
100%	10,500	31	5,425

(f) *Subpoenas for Child Support*: The bill allows the CSB or an agent of the CSB to issue a subpoena to obtain any financial or other information needed to establish, modify, or enforce a child support order. Currently, prosecuting attorneys are required to go before the court to obtain information. Under the bill, they would no longer be required to do so. Both the CSB and the Prosecuting Attorneys Council report that, as proposed, the process of obtaining information would be accelerated and would in turn reduce the workload for both the courts and prosecuting attorneys.

The bill requires the CSB, or an agent of the Bureau, to send the subpoena under Indiana Trial Rule 45. Trial Rule 45 of the Indiana Trial Court Rules provides that notification be sent through: (1) registered or certified mail or other public means by which a written acknowledgment or receipt may be requested and obtained to his residence or place of business or employment with return receipt requested and returned showing receipt of the letter; (2) delivering a copy of the summons to the person personally; (3) leaving a copy of the summons and complaint at the person's dwelling house or usual place of abode; or (4) serving his agent as provided by rule, statute, or valid agreement. If the notice is sent under (3) or (4), the DCS is required to send by first class mail a copy of the notice to the last known address of the person being served. In addition, if

the action is to terminate a parent-child relationship and the parent cannot be served in accordance with Rule 4.1 of the Indiana Rules of Trial Procedure, service must be made by publication. The cost to send a letter first class mail is currently \$0.39; it is \$2.79 to send through certified mail. Increases in expenditures would depend on the number of subpoenas sent and the method in which they were sent.

(g) *Weekly Child Support Increases*: The bill allows the CSB to increase the weekly amount withheld from a child support obligor subject to an income withholding order who is in arrears. The CSB reports that it is currently in the process of modifying its database to be able to do so; thus, no increase in expenditures or workload is anticipated from the provision.

**Explanation of State Revenues:** (a) *Income Withholding Orders: Income Payor Penalty*: The bill allows the state to penalize an income payor for an amount not to exceed \$5,000 if the income payor: (1) discharges an obligor from employment, (2) refuses to employ an obligor, (3) takes disciplinary action against an obligor employed by the income payor, or (4) otherwise discriminates against an obligor; because of the existence of an income withholding order or the obligations imposed upon the income payor by the income withholding order. The number of penalties which would be imposed is not known. The CSB reports that penalties would be deposited into the state General Fund; thus, revenue to the state General Fund would increase under the provision.

Under current law, if an obligor is discharged from employment, refused employment, or disciplined because the income payor is required to withhold income of an obligor, an obligor is entitled to recover an amount not less than \$100. The obligor collects the money through civil action.

*Court Fee Revenue*: If fewer civil actions occur and court fees are collected, revenue to the state General Fund may decrease. A civil filing fee of \$100 is assessed when a civil case is filed, 70% of which is deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court. In addition, some or all of the judicial salaries fee (\$15), the public defense administration fee (\$3), the court administration fee (\$2), and the judicial insurance adjustment fee (\$1) are deposited into the state General Fund.

(d) *Child Support Fee Increase*: The bill increases the Child Support and Maintenance Fee from \$30 to \$55, a difference of \$25. Support and Maintenance Fees are collected at both the state and county level depending on payment method. Fees collected by the DCS are deposited into the state General Fund. Fees collected at the county level are deposited into the county general fund. Both payment location and fee amount were modified during the 2006 legislative session; thus, data is not available which identifies the number of persons paying Support and Maintenance Fees and the location (county or state) at which fees were collected. The DCS reports that approximately 90% of child support payments are made at the state level through income withholding order or some other form (e.g., check), and 10% are made in cash at the county level.

As of September 30, 2006, there were 355,757 child support orders through the DCS. The number of those which a payment was made at least once during 2006 was 177,232. As was stated before, data is not currently available which indicates the actual number of persons paying Support and Maintenance Fees; however, it is known that all persons paying on a child support order do not also pay Support and Maintenance Fees. Given this fact, the state would experience an increase in revenue ranging between \$0 and \$8.9 M annually. However, approximately two-thirds of the fee would be forwarded to the federal government. Thus, actual increases in revenue would range between \$0 and \$3 M annually. The table below presents estimated revenue based on various scenarios on the number of child support obligors paying fees.

Number of Obligor Paying Fee's	Percent of Obligor Paying Fee's	Total Fees Collected	Federal Share of Revenue	State Share of Revenue
71,151	20%	\$1,778,775	\$1,173,992	\$604,784
142,303	40%	\$3,557,575	\$2,348,000	\$1,209,576
213,454	60%	\$5,336,350	\$3,521,991	\$1,814,359
284,606	80%	\$7,115,150	\$4,695,999	\$2,419,151
355,757	100%	\$8,893,925	\$5,869,991	\$3,023,935

*Note:* A portion of the state share of revenue may be retained at the county level for fees which are paid to the county. The percent of fees falling into this category is not known.

**Summary of Net Local Impact:** The following reflects a summary of the impact on both local expenditures and revenues.

Provision	Local Expenditures	Local Revenues
(a) Income Withholding Order Changes.	Allows the court to find an income payor who fails to comply with an income withholding order in contempt of court. Could potentially increase expenditures for counties should additional individuals be housed in county jails; Minimal increase in administrative duties for courts.	Would decrease court fee revenues.
(d) Changes the annual child support fee from \$30 to \$55.		Unknown increase in revenue.

**Explanation of Local Expenditures:** *Details of the Bill -*

(a) *Income Withholding Orders: Contempt of Court:* The bill allows the court to find an income payor who fails to comply with an income withholding order in contempt of court. This provision could potentially increase expenditures for counties should additional individuals be housed in county jails. (See also "*Explanation of State Expenditures, Approval of Income Withholding Order Stays*".)

**Explanation of Local Revenues:** (a) *Income Withholding Orders: Income Payor Penalty, Court Fee Revenue:* If fewer civil actions occur, local governments would no longer receive revenue from the following sources. The county general fund currently receives 27% of the \$100 filing fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee is deposited in the county general fund and 25% is deposited in the city or town general fund. Additional fees may be collected at the discretion of the judge and depending upon the particular type of case. These would no longer be collected.



(d) *Child Support Fee Increase*: Under the bill, counties would experience an increase in revenues which would depend on the number of persons paying child support at the county level and the number of those individuals who pay the Child Support and Maintenance Fee. Revenue would increase to the county general fund by \$25 per person paying the Child Support and Maintenance Fee.

(Revised) (j) *Clarification of Service of Process Fee Statute*: The bill clarifies current statute to state that a service of process fee may be collected only one time per case for the duration of the case.

**State Agencies Affected:** Department of Child Services; Family and Social Services Administration.

**Local Agencies Affected:** Courts; Prosecuting Attorney's; Clerks of the Court.

**Information Sources:** John Ryan, DCS; Wendy Yerkes, DCS; Steve Johnson, Prosecuting Attorney's Council; Michael Vicars, Region 5, federal office of Administration for Children and Families; Michael McAlexander, Chief Deputy Prosecutor, Allen County; Vivek Jain, Deloitte; 2005 *Indiana Judicial Services Report*.

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